IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1118 OF 2006
IN
SUIT NO.2609 OF 1990

Central Bank of India & Ors. ...Plaintiffs
Vs.
The Official Liquidator of Kamdar Cement Limited & Ors. ...Defendants

Ms.Madhulika Shukla i/b.M/s.Gagrat & Co. for Applicant
Mr.B.B.Saraf with Mr. D.Chaurasia i/b.M.K.Ambalal & Co. for Defendant No.7

CORAM: SMT. ROSHAN DALVI, J.
DATED: 22ND JANUARY, 2007

P.C.

1. This Chamber Summons has been taken out by the Defendant No.7 for direction to the Court Receiver, High Court, Bombay appointed in this Suit to hand over possession to the private Receiver of the DRT, for waiver of fees/commission and for an order against the Plaintiff to pay the Court Receiver certain sum of Rs.18222/- .

2. The Court Receiver has been appointed since 1990. This Chamber Summons has been taken out in August, 2006. The Court Receiver has remained on record and carried out

his functions for about 15 years. The Court Receiver has handed over possession of the properties for which he was appointed on the condition that his cost charges and expenses would be paid. Prayer clause (a) is accordingly worked out and not pressed.

3. The Court Receiver's fees are payable as per Rules 591 and 592 of the High Court Rules. The Defendant No.7 seek waiver of the fees which is 1% of the amount valuation of the suit property. The valuation report has been submitted to the DRT, Mumbai. The Court Receiver shall have to make his calculations regarding the cost charges and expenses incurred by him. Waiver cannot be granted. Mr. Saraf on behalf of the Defendant No.7 concedes this fact and applies for reduction of the fees. No case for reduction of the fees is made out in view of the fact that the Court Receiver remained in possession for atleast 15 years. Mr. Saraf argued that except for taking possession to secure the properties nothing else has been done by the Court Receiver.

4. This case is covered by the order in Appeal No.833 of 2005 in Chamber Summons No.1211 of 2003 in Suit No.4411 of 1997 in which it has been held by the Division Bench of this Court that only in exceptional case such as the case of a person from a weaker section of the Society, widow

or minor the fees charged by the Court Receiver under Rules 591 and 592 of the High Court Rules may be reduced. It is therefore, not a matter of discretion for the Court in each separate case to waive or reduce the fees payable as per Rules. It is argued that because Civil Suits have been transferred to the DRT the Court Receiver, who is an Officer of this Court, could not continue and the Plaintiffs in those cases have been saddled with additional charges of a private Receiver appointed by the DRT, Mumbai. In that case only the Administrative decision of the High Court can reconsider those cases as exception to Rules 591 and 592 for waiver of the fees payable or refund of part fees paid. The prayer regarding waiver of fees must therefore, be rejected.

5. The Defendant No.7 requires the Plaintiff to pay Rs.18222/- being the Court Receiver's cost charges and expenses. It is their claim that they have paid the said amount instead of the Plaintiffs. The properties have to be protected and kept secured by the Court Receiver. To that end the Defendant No.7 has as much interest as the Plaintiff. It is the matter of adjustment between the two parties at the time of final accounts. At present no directions for payment to the Court Receiver need be passed. There shall be no order in the Chamber Summons.

6. No order as to costs.

(SMT.ROSHAN DALVI, J.)